(2337/07)

Filed on 21/9/07
by Shri Sanjit Kaur ..... Advocate
21/9/07
R. to D.R. (J)

(1) (3)

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT

BILASPUR

CR.M.P. NO. 193 OF 2007

APPLICANT (IN JAIL) : Sanjeet Pal Son of Virendra Kumar Pal, aged about 38 years, Resident of Village Sankra Bangala, Police Station Balod District Durg (C.G.).

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VERSUS

NON-APPLICANT : State of Chhattisgarh, Through: Officer Incharge, Police Station Dhamtari, District Dhamtari (C.G.).

APPLICATION UNDER SECTION 482 OF CODE OF CRIMINAL PROCEDURE FOR ISSUANCE OF DIRECTION FOR RELEASING THE APPLICANT FROM JAIL AND FOR APPROPRIATE COMPENSATION

20

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. NO.192/2007

PETITIONER Sanjeet Pal, Son of Virendra Kumar Pal, aged about 38 years, Resident of Village Sankra Bangala, Police Station Balod District Durg (C.G.)

Versus

RESPONDENT State of Chhattisgarh, Through: Officer Incharge, Police Station Dhamtari, District Dhamtari (C.G.)

Cr.M.P. NO.193/2007

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RESPONDENT State of Chhattisgarh, Through: Officer Incharge, Police Station Dhamtari, District Dhamtari (C.G.)

PETITIONS UNDER SECTION 482 Cr.P.C.

Appearance:

Shri Uttam Pandey, Counsel for the petitioner in both the petitions.

Shri M.P.S. Bhatia, Panel Lawyer for the State in both the petitions.

ORAL ORDER
(19.07.2007)

SUNIL KUMAR SINHA, J.

Heard finally with the consent of both the parties.

Common order passed as follows :

"A short question raised for consideration is as to whether the sentences awarded to the sole accused in two different

> Criminal Cases on the same day shall be served upon him concurrently or consecutively, where there is no such direction in the judgments in this regard and the judgments are silent on this point".

Petitioner – Sanjeet Pal was accused in 2 different crime numbers registered as Crime No.152/1993 and 155/1993 and two different charge sheets were filed against him. Criminal Case No.948/1999 relates to Crime No.152/1993, whereas, Criminal Case No.949/1999 relates to Crime No.155/1993. In both these Criminal Cases, the petitioner was convicted under Section 420 and 468 of IPC and sentenced to undergo R.I. for 2-2 years on each count and to pay a fine of Rs.500-500/-, in default of payment of fine to further undergo additional imprisonment for 2-2 months with a further direction to run the sentences concurrently. These judgments were passed by the Judicial Magistrate First Class, Dhamtari on 22/8/2000 in both the cases, after conducting two different criminal trials.

Against each of the judgments i.e. judgment passed in Criminal Case No.948/1999 as well as Criminal Case No.949/1999, the petitioner preferred 2 different Criminal Appeals. The appeal pertaining to Criminal Case No.948/99 is Criminal Appeal No.26/2000 and appeal pertaining to other Criminal Case No.949/1999 is Criminal Appeal No.27/2000. These two appeals were also heard separately and they were decided by two separate judgments passed by the Additional Sessions Judge, Dhamtari on 27/1/2005. The concerned Additional Sessions Judge dismissed both the appeals and confirmed the judgment of conviction and order of sentence passed by the trial Court. That is to say that the judgment and order passed by the trial Court remained as it is and no change in it was made by the Appellate Court.

It appears that in consequence of the aforesaid judgments, passed in two Criminal Cases and thereafter in two different Criminal Appeals, the petitioner was sent for serving the sentences. After completion of the sentences of 2-2 years, which

were to run concurrently for a particular case, when the petitioner was not released finally, he has filed these petitions before the High Court for necessary direction and to pass an order for his final release holding that in the facts and circumstances of his two criminal trials, the sentences had to run concurrently in both the cases and by the end of 2 years, he should have finally been released in both the cases, whereas, the Jail Authorities are not releasing him holding that the sentences confirmed in the two Criminal Appeals are to be served consecutively, therefore, he has to be retained for another block of 2 years after providing set off as well as concurrent running facility, as has been awarded separately in the two judgments.

Learned counsel for the petitioner submits that since the sentences were awarded on the same day and the appeals were also decided on the same day, therefore, the sentences in both the Criminal Cases are required to be served concurrently and the petitioner was required to be released in both the cases on 26.1.2007, which is the date of completion of his 2 years of sentence. He refers to the decision of the Apex Court rendered in the matter of ***Mohd. Akhtar Hussain @ Ibrahim Ahmed Bhatti vs. Assistant Collector of Customs (Prevention) Ahmedabad & others 1988 (3) Crimes Page 291.***

On the other hand, learned counsel for the State submits that since there is no direction in the two separate judgments, passed by the trial Court, as well as the Appellate Court, the sentences are to run consecutively and the State is not at fault, when it has not released the petitioner at the end of completion of the sentences awarded in one case

I have heard learned counsel for the parties at length and have also perused the paper books of both the Criminal Misc. Petitions.

So far as factual aspect of matter is concerned, it has not been disputed by both the counsel, therefore, it is an admitted position that the petitioner was arrested in two different Crime numbers and two different Criminal Cases were registered against him in the Police Station vide two different Crime

Numbers i.e. Crime No.152/93 and Crime No.155/93, for which, two different charge-sheets were filed before the Magistrate, on which, two different Criminal Cases vide No.948/1999 and 949/1999 were prosecuted and two different judgments were delivered in these cases. Then, against these two judgments, two separate appeals were filed and they were also dismissed by two different judgments rendered by the Appellate Court.

Section 427 Cr.P.C. provides for sentence on offender already sentenced for another offence. Sub-section (1) provides that when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court direct that the subsequent sentence shall run concurrently with such previous sentence. A proviso is also there which shows that where a person who has been sentenced to imprisonment by an order under Section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately. Sub-section (2) provides that when a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

The provisions of this Section have been taken note of by the Apex Court in the matter of Mohd. Akhtar Hussain (Supra), in which, the Apex Court, vide para 5, held that this Section relates to administration of criminal justice and provides procedure for sentencing. The sentencing Court is, therefore, required to consider and make an appropriate order as to how the sentence passed in the subsequent case is to run. Whether it should be concurrent or consecutive? The Apex Court further said that the basic rule of thumb over the years has been the so called single transaction rule for concurrent sentences. If a

given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offence is not the same or the facts constituting the two offences are quite different.

The judgment rendered by the Apex Court in Mohd. Akhtar Hussain's case is in connection with two different crimes, which were registered against the same person, out of which, in the former, he was already convicted for 7 years and was undergoing the sentence of imprisonment and in the later, the conviction was awarded some lesser after taking note of the former sentence, which was challenged by the State as well as the accused before the High Court. In the High Court, the accused appealed against the sentence on the ground that the sentence should have been made concurrent and the State contended that the maximum sentence should have been awarded to the accused. The High Court accepted the State appeal and enhanced the sentence from 4 to 7 years and made it consecutive. It was this order, which was challenged before the Supreme Court, in which, the aforesaid judgment was passed and the Supreme Court while going on the merits of the sentence awarded, set aside the judgment of the High Court and restored the judgment of the trial Court.

The ratio of the judgment rendered by the Apex Court in the said matter is not helpful to the petitioner in this case. The ratio is not on the point that if the two sentences are awarded separately in two cases and there is no direction about their serving upon the accused, they shall essentially be served concurrently. Further, the case of the petitioner is distinguishable on the point that in the judgment of the Apex Court, there was a direction by the trial Court as to how the sentence would run, but in case of the petitioner, there is no such direction and the judgment is silent on this point.

The key words used in Section 427 Cr.P.C. are that "Unless the Court directs that the subsequent sentence shall

run concurrently with such previous sentence", that means by necessary implication, if two sentences are awarded to an accused in two different Criminal Cases and there is no direction in the judgments that how the sentences awarded shall be suffered, that means whether it shall be suffered concurrently or consecutively, then, by necessary implication, it shall be meant that the sentences are to run consecutively and not concurrently.

At this stage, Shri Pandey raises a point that this is a provision made in Section 427 Cr.P.C. pertaining to a subsequent conviction, as is envisaged in the earlier part of the Section, but when the conviction is simultaneous, the provisions pertaining to direction of the Court contained in the later part of the Section would not prevail.

The arguments advanced by learned counsel for the petitioner appears to be misconceived. The words used by the legislature clearly mean thereby that in any case, unless there is a direction of the Court, a sentence is to run separately from another sentence, which has been awarded to the same accused in a different case. There may be a situation that an accused is already undergoing a sentence and there may also be a situation in which the sentences are being awarded on the same day simultaneously in two different crimes, but if the court itself has not taken notice of this fact by not providing for a direction to run the sentences of two different cases concurrently, the sentences are to run separately and the factor that the convictions were awarded simultaneously on the same day would not come in the way of application of provisions contained in the later part of sub-section (1) of Section 427 of Cr.P.C. It is more so because in all cases even where the decisions are made simultaneously, in absence of any statutory provisions in this regard, after the one all shall always be subsequent to it for the purpose of this Section. At this stage, we should also take note of Section 429 (1) Cr.P.C., which deals with saving clause saying that nothing in Section 426 or 427 shall be held to excuse any person from any part of the

punishment for which he is liable upon his former or subsequent conviction.

In light of the above discussions and further in light of the observations made in Mohd. Akhtar Hussain's case, I do not find any merit in these two petitions and in view of the two separate judgments passed against the petitioner, the directions desired can not be issued in favour of the petitioner in light of the provisions of Section 427 Cr.P.C. - The question raised is answered that in such situation, the sentences shall be served consecutively.

The petitions are misconceived and the same are accordingly dismissed.

Sd/-
Sunil Kumar Sinha
Judge

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